

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Case No. 8:03-CR-77-T-30TBM

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

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SAMI AMIN AL-ARIAN’S APPEAL FROM MAGISTRATE’S ORDER
REGARDING TRANSLATIONS OF FOREIGN LANGUAGE EVIDENCE

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by and through undersigned counsel and pursuant to 28 U.S.C. 636 (b)(1)(A) objects, in its entirety, and requests reconsideration of the Magistrate Judge’s Order (Docket 1038) discussing translations of foreign language evidence. As grounds in support, Dr. Al-Arian states:

Production of Counter Translations

Counsel for the Accused represented to the Magistrate that in the past 60 days 321 revised/redacted translations had been produced by the government in this case; these revised versions were of conversations that the government had originally translated three to four years ago, and which had been recorded and in the government’s possession for nearly a decade. Because of Dr. Al-Arian’s incarceration, the conditions of Dr. Al-Arian’s confinement, and the rules of the institutions where he has been confined, it has been difficult, if at times, nearly insurmountable, to facilitate his review of translations because of prohibitive prison regulations and other conditions which have been reported to the Magistrate for over a year. The Magistrate dismissed this argument by countering

that he believed that Dr. Al-Arian was the ‘most prepared criminal defendant’ he had seen.¹ Counsel for the Accused represented to the Court that Dr. Al-Arian had already adopted approximately 165 translations that were offered by the Federal Public Defender, but approximately 65 translations were left to review². While diligent attempts are underway to complete this review, counsel continues to object to these particular overt act conversations as acceptable.

Additionally, Counsel indicated unequivocally that the defense objected to all ‘redacted’ translations.³ Therefore counsel objects to the Magistrate’s assertion in his order that

“As for all other translations/transcripts pertaining to the overt acts, it is understood that the content of the Government’s translations is acceptable and the Government’s translations/transcripts will be used during its case-in-chief and during rebuttal, subject only to evidentiary objections and cross-examination.” Docket 1038, Pages 1 & 2.

Dr. Al-Arian does not share this understanding, as argued by counsel during the hearing.

Hearsay

At the hearing, defense counsel objected to the “format” on the translated transcripts to be used by the government. Specifically, counsel suggested that the only appropriate format or “header” would be the overt act number. Any additional information, including the time and date of the conversation, any telephone numbers, etc. would be hearsay. In fact, during one exchange, counsel for the Accused asked the

¹ Because of time restrictions, counsel was not able to order the transcript of the proceeding in time for incorporation into this Appeal. Therefore, the record will be referred to in the best recollection of counsel.

² These translations relate to the following 65 overt acts: 144.3, 246, 249.3, 252.14, 43b, 35a, 140, 23, 29a, 31, 32, 33, 40.4, 45, 48c, 59.1, 68b, 72, 73, 74, 76, 78, 79, 82, 83, 85, 86, 87, 89, 90, 94, 96, 103, 124, 131, 137, 141b, 144b, 146.1, 155, 161, 167, 172a, 174, 175, 175.1, 181.1, 188, 194, 196, 197, 199.19, 203, 212, 213.4, 214, 216, 216.5, 217, 242.16, 243, 248.1, 251.8, 251.10, 252.20

³ As recently as May 14th, 2005, counsel received a new CD containing 55 superseding revised translations which were included in a letter from the Department of Justice, dated May 13, 2005. It is uncertain when Dr. Al-Arian will be able to review these latest revisions.

Magistrate if this type of information was not the rankest form of hearsay, and the Magistrate agreed. Therefore, the hearsay objection to this information is reasserted and those portions of the format as indicated in the Magistrate's Order are asked to be stricken.

Based on the foregoing, Dr. Al-Arian asserts that the Magistrate Judge erred in his conclusions under the circumstances of this case. In light of the continuous production and modifications of translations by the government and in light of the Accused's inability to respond because this review of the translations has been effected by the conditions of his confinement which has prevented the complete review, Dr. Al-Arian should be afforded the opportunity to complete his review of the remaining overt act translations as indicated in footnote 2. Further, Dr. Al-Arian notes his objections to all 'redacted' translations and to all hearsay information allowed in the format of these translations. Accordingly, Dr. Al-Arian respectfully requests this Court reconsider the Magistrate's Order.

Dated: 17 May 2005

Respectfully Submitted,

/s/ William B. Moffitt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 May , 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
Attorney for Sami Al-Arian